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REPORT OF THE PREPARATORY COMMITTEE ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

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INTRODUCTION

1. The General Assembly, in its resolution 50/46 of 11 December 1995, decided to establish a preparatory committee for the establishment of an international criminal court to discuss the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission in 1994 and to draft texts with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries.

2. The Preparatory Committee on the Establishment of an International Criminal Court met from 25 March to 12 April and from 12 to 30 August 1996, during which time it discussed further the issues arising out of the draft statute and began preparing a widely acceptable consolidated text of a convention for an international criminal court.[1]

3. Pursuant to paragraph 2 of General Assembly resolution 50/46, the Preparatory Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

4. Mr. Hans Corell, Under-Secretary-General, the Legal Counsel, opened the session and represented the Secretary-General. Mr. Roy S. Lee, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Preparatory Committee. The Codification Division provided substantive servicing for the Preparatory Committee.

5. The Bureau of the Preparatory Committee comprised the following:

Chairman: Mr. Adriaan Bos (Netherlands)

Vice-Chairmen: Mr. Cherif Bassiouni (Egypt)
Mrs. Silvia A. Fernández de Gurmendi (Argentina)
Mr. Marek Madej (Poland) (1996-1997);
Mr. Peter Tomka (Slovakia) (1998)

Rapporteur: Mr. Juan Yoshida (Japan) (1996);
Mr. Masataka Okano (Japan) (1997-1998)

6. By paragraphs 3 and 4 of its resolution 51/207 of 17 December 1996, the General Assembly reaffirmed the mandate of the Preparatory Committee and decided that it should meet from 11 to 21 February, 4 to 15 August and 1 to 12 December 1997, and from 16 March to 3 April 1998, in order to complete the drafting of a widely acceptable consolidated text of a convention, to be submitted to the diplomatic conference of plenipotentiaries, and requested the Secretary-General to provide the necessary facilities for the performance of its work.

7. The General Assembly, in its resolution 52/160 of 15 December 1997, accepted with deep appreciation the generous offer of the Government of Italy to act as host to the United Nations Diplomatic Conference of Plenipotentiaries on

the Establishment of an International Criminal Court and decided to hold the Conference in Rome from 15 June to 17 July 1998.

8. In the same resolution, the General Assembly requested the Preparatory Committee to continue its work in accordance with Assembly resolution 51/207 and, at the end of its sessions, to transmit to the Conference the text of a draft convention on the establishment of an international criminal court prepared in accordance with its mandate.

9. The Preparatory Committee held its sessions at United Nations Headquarters.[2] At its last session, held from 16 March to 3 April 1998, the Preparatory Committee had before it a consolidated text[3] prepared by its Bureau and coordinators on the basis of all the texts that it had elaborated or that had been submitted to it. The compilation was used as a basis for the work of the Committee at that session.

10. At its 56th meeting, on 16 March 1998, the Preparatory Committee decided to conduct its work through working groups on the following subjects: procedural matters (chaired by Ms. Silvia Fernández de Gurmendi); composition and administration of the court (chaired by Mr. Lionel Yee); establishment of the court and its relationship with the United Nations (chaired by Mr. Sankurathripati Rama Rao); applicable law (chaired by Mr. Per Saland); ne bis in idem (chaired by Mr. John Holmes); jurisdictional issues (chaired by Mr. Erkki Kourula); and enforcement (chaired by Mrs. Molly Warlow). The final clauses were considered at the informal meetings under the chairmanship of Mr. Adriaan Bos.

11. At its 57th meeting, on 1 April 1998, the Preparatory Committee adopted the reports of the working groups mentioned above.

12. At its 60th meeting, on 3 April 1998, the Preparatory Committee adopted the text of a draft statute on the establishment of an international criminal court[4] and the draft final act.[5]

13. In its resolution 52/160, the General Assembly had requested the Secretary-General to prepare the text of the draft rules of procedure of the Conference, to be submitted to the Preparatory Committee for its consideration and recommendations to the Conference, with a view to the adoption of such rules by the Conference in accordance with the rules of procedure of the General Assembly, and to provide for consultations on the organization and methods of work of the Conference, including rules of procedure, prior to the convening of the last session of the Committee. At its 61st meeting, on 3 April 1998, the Preparatory Committee adopted for recommendation to the Conference the draft rules of procedure of the Conference,[6] as amended orally, pursuant to resolution 52/160.

14. At its 61st meeting, on 3 April 1998, the Preparatory Committee took note of the draft organization of work prepared by the Secretariat and decided to transmit it to the Conference.

15. At the same meeting, the Preparatory Committee agreed to transmit to the Conference the following:

- Draft statute for the International Criminal Court (part one of the present report; see A/CONF.183/2/Add.1);

- Draft Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (part two of the present report; see A/CONF.183/2/Add.1);

- Draft rules of procedure for the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (part three of the present report; see A/CONF.183/2/Add.2);

- Draft organization of work of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (part four of the present report; see below).

16. In its resolution 52/160, the General Assembly requested the Secretary-General to invite non-governmental organizations, accredited by the Preparatory Committee with due regard to the provisions of section VII of Economic and Social Council resolution 1996/31 of 25 July 1996, and in particular to the relevance of their activities to the work of the Conference, to participate in the Conference, along the lines followed in the Committee, on the understanding that participation meant attending meetings of its plenary and, unless otherwise decided by the Conference in specific situations, formal meetings of its subsidiary bodies except the drafting group, receiving copies of the official documents, making available their materials to delegates and addressing, through a limited number of their representatives, its opening and/or closing sessions, as appropriate, in accordance with the rules of procedure to be adopted by the Conference. On the basis of the lists of non-governmental organizations compiled by the Secretariat with the assistance of the NGO Coalition for the Establishment of an International Criminal Court,[7] the preparatory Committee decided that the non-governmental organizations listed therein should be invited to participate in the Conference in the manner set out in resolution 52/160.

17. At the 57th meeting, on 1 April 1998, the representative of the Netherlands announced his country's candidacy of The Hague for the seat of the international criminal court.

18. Pursuant to paragraph 7 of resolution 51/207, the Secretary-General established a trust fund for the participation of the least developed countries in the work of the Preparatory Committee and the Conference. Guidelines were established for the administration of the fund. The Committee noted that the following Governments had made contributions to the fund: Belgium, Canada, Denmark, Finland, Netherlands, Norway, Sweden and United Kingdom of Great Britain and Northern Ireland. Thirty-three representatives from 18 States had thus far utilized the trust fund to facilitate their participation in the meetings of the Preparatory Committee during 1997 and 1998. The European Commission had awarded a grant to the trust fund, but owing to procedural difficulties, the transfer of the contribution had been delayed.

19. Furthermore, pursuant to paragraph 7 of resolution 52/160, the Secretary-General also established a trust fund for the participation of other developing countries in the work of the Preparatory Committee and in the Conference. The

Government of the Netherlands had made a contribution, which would be available to those developing countries requesting assistance to facilitate their participation in the Conference.

20. The Preparatory Committee expressed its deep appreciation to the Governments that had made contributions and to the European Commission for its award to the above-mentioned trust funds. The Committee noted that the General Assembly, in its resolution 52/160, had called upon States to contribute voluntarily to the trust funds.

21. At its 61st meeting, on 3 April 1998, the Preparatory Committee took note of the following nominations for officers of the Conference:

President: Mr. Giovanni Conso (Italy);

Chairman of the Committee of the Whole: Mr. Adriaan Bos (Netherlands);

Chairman of the Drafting Committee: Mr. Cherif Bassiouni (Egypt).

Notes

[1] See Official Records of the General Assembly, Fifty-first Session, Supplement No. 22 (A/51/22).

[2] See the decisions taken by the Preparatory Committee at its session held from 11 to 21 February 1997 (A/AC.249/1997/L.5); decisions taken by the Preparatory Committee at its session held from 4 to 15 August 1997 (A/AC.249/1997/L.8/Rev.1); and decisions taken by the Preparatory Committee at its session held from 1 to 12 December 1997 (A/AC.249/1997/L.9/Rev.1).

[3] A/AC.249/1998/L.13.

[4] A/AC.249/1998/CRP.6-18 and corrigenda.

[5] A/AC.249/1998/CRP.19.

[6] A/AC.249/1998/CRP.3/Rev.1.

[7] A/AC.249/1998/CRP.22.

Part One. Draft Statute for the International Criminal Court (See A/CONF.183/2/Add.1)

Part Two. Draft Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (See A/CONF.183/2/Add.1)

Part Three. Draft rules of procedure for the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (See A/CONF.183/2/Add.2)

PART FOUR

Draft organization of work of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

1. As mandated by the General Assembly in its resolution 52/160, of 15 December 1997, the task of the Conference is to finalize and adopt a convention on the establishment of an international criminal court. The Conference should move promptly to the consideration of substantive matters after a short session on organizational matters.

2. After the opening of the Conference by the Secretary-General of the United Nations, the Conference will meet to elect the President, adopt the agenda and the rules of procedure and elect other officers.

3. The General Committee will meet immediately following the election of its members. Its work will include, inter alia, assisting the President in the general conduct of business and making recommendations with respect to the election of members of the Drafting Committee.

4. The plenary, on the recommendations of the General Committee will then elect the members of the Drafting Committee and adopt the programme of work of the Conference.

5. The plenary will then proceed to hear statements from States in accordance with an established list of speakers prepared on a first-come-first-served basis. The Conference will also hear statements from a limited number of intergovernmental organizations and non-governmental organizations. The list of speakers will be opened for inscription on 15 April 1998.

6. With a view to the efficient and expeditious discharge of the work of the plenary, a time limit may be established for statements by States on the one hand (e.g., seven (7) minutes) and intergovernmental organizations and non-governmental organizations on the other (e.g., five (5) minutes). In principle, States should be given more time than intergovernmental organizations and non-governmental organizations. A total of seven meetings may be allotted for this purpose.

7. The Committee of the Whole should concentrate on the substantive work and should begin its work on 16 June. It may hold up to four meetings (with full interpretation) per day throughout the Conference, i.e., two bodies may meet concurrently, both morning and afternoon. The Committee of the Whole will report to the plenary upon the completion of its work.

8. A working group of the Committee of the Whole will begin its work on the afternoon of 17 June.

9. The Drafting Committee may begin its work on 19 June; two meetings (with full interpretation) per day may be allotted to it throughout the Conference. The Drafting Committee will receive its work from the Committee of the Whole and

report to it. Time constraints might make it necessary to allow the Drafting Committee to report on the last portion of its work directly to the plenary.

10. The Credentials Committee will meet sometime during the second or third week of the Conference. One meeting has been allotted for that purpose.

11. The last day of the Conference is reserved for the signature of the Final Act and of the Statute of the Court and for the closure of the Conference.